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10/780,802	02/17/2004	Stanislaw Kielbowicz	015258-062800US	1519

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EXAMINER
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DUDNIKOV, VADIM

ART UNIT	PAPER NUMBER
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3663

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/780,802	<b>Applicant(s)</b> KIELBOWICZ, STANISLAW	
	<b>Examiner</b> VADIM DUDNIKOV	<b>Art Unit</b> 3663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed 1/22/2008 in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submissions filed on January 1, 2008 have been entered.

### ***Response to Arguments***

2. Applicant's arguments see pages 5-9, filed 1/22/2008, with respect to of previous Office action have been fully considered but they are not in every respect persuasive. Those rejections and objections that have been overcome by amendment are omitted from the present Office action and are considered withdrawn.

Rejections of amended claims are established in light of further consideration of the prior Art. See rejections underneath.

The amendments to claim 1 is acknowledged. Claims 1 and 3-12 have been examined. Applicant's arguments are considered and answered below.

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Regarding Applicant's remarks on page 5, lines 23+ relating to "sequences of wall 11, 13", Examiner respectfully apologues for misspelling. Correct interpretation should be: "Intermediate wall" and "spaced apart wall" represents in '398 by "sequences of close located walls 11 and 12", what is similar to the Applicant's "Intermediate wall" and "spaced apart wall".

Other arguments are relating to the amended claim language rather than rejected claim language.

Rejections of amended claims are established in light of further consideration and/or search of the prior Art. See rejections underneath.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claim 1 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 7,211,190 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because limitations of Applicant's claim 1 are obvious over the claim limitations of said US Patent as shown below (at least of broadest reasonable claims interpretation).

Claim 1 of Application 10/780802 discloses the following limitations indicated in normal font, corresponding to the limitations in the US Patent indicated in italic:

1). A protective screen for screening off a suction space and a suction duct connected to it, in an emergency cooling system of a nuclear power plant, said protective screen including::

*1'). Strainer wall for screening off a suction space and a suction duct connected to it in an emergency cooling system of a nuclear power plant, said strainer wall including;*

2). at least one screen wall element having a suction side and an outflow side wherein the screen wall element is built up of one or more modular **rectangular** cassette units and wherein the cassette units each contain a plurality of screen pockets which are open towards the suction side spaced apart walls and one or more intermediate walls arranged between and apart from the spaced apart walls, which intermediate walls are formed as double walls allowing fluid flow inside the double walls;

*2'). at least one strainer wall element having an inlet side and an outflow side, wherein the inlet side is oriented inclined or perpendicular; the strainer wall element is built up*

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*of one or more modular cassette units (not necessary claimed to be rectangular); wherein the screen elements are made as suction pockets that are surrounded by outflow gaps which are connected to the outflow side or are open to the outflow side, and the cassette units each contain a plurality of screen elements which are open towards the inlet side and which are connected to the outflow side;*

3). and bent perforated wall segments spanning the distance between two consecutive intermediate walls and between a spaced apart wall and an intermediate wall, in order to form the screen pockets, said screen pockets having lateral sides and being surrounded by outflow gaps, said outflow gaps being connected to the outflow side or open towards the outflow side;

3'). *the cassette units contain bent wall segments between outer walls and/or one or more intermediate walls in order to form the suction pockets, wherein the bent wall segments comprise essentially U-shaped bent perforated wall segments;*

and wherein the cassette units are configurable for placement in a row in order to assemble the screen wall element in the desired size.

Conversely, claim 1 of US Patent No. 7,211,190 B2 discloses limitations (printed in italic) with following limitations of Claim 1 of Application 10/780802:

1'). *Strainer wall for screening off a suction space and a suction duct connected to it in an emergency cooling system of a nuclear power plant;*

1). A protective screen for screening off a suction space and a suction duct connected to it, in an emergency cooling system of a nuclear power plant, said protective screen including:

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*2') said strainer wall including at least one strainer wall element having an inlet side and an outflow side, wherein the inlet side is oriented inclined or perpendicular; the strainer wall element is built up of one or more modular cassette units; and the cassette units each contain a plurality of screen elements which are open towards the inlet side and which are connected to the outflow side, wherein the screen elements are made as suction pockets that are surrounded by outflow gaps which are connected to the outflow side or are open to the outflow side;*

2). at least one screen wall element having a suction side and an outflow side, wherein the screen wall element is built up of one or more modular rectangular cassette units and wherein the cassette units each contain a plurality of screen pockets which are open towards the suction side, spaced apart walls and one or more intermediate walls arranged between and apart from the spaced apart walls, which intermediate walls are formed as double walls allowing fluid flow inside the double walls,

*2'). and the cassette units contain bent wall segments between outer walls and/or one or more intermediate walls in order to form the suction pockets, wherein the bent wall segments comprise essentially U-shaped bent perforated wall segments;*

2). and bent perforated wall segments (**not necessary claimed to be** essentially U-shaped) spanning the distance between two consecutive intermediate walls and between a spaced apart wall and an intermediate wall, in order to form the screen pockets, said screen pockets having lateral sides and being surrounded by outflow

gaps, said outflow gaps being connected to the outflow side or open towards the outflow side, and wherein the cassette units are configurable for placement in a row in order to assemble the screen wall element in the desired size.

It has been held that a shape capable of performing the claimed function constitutes a case of *prima facie* anticipation. In re Schreiber, 128 F.3d at 1478, 44 USPQ2d at 1432. Moreover, both the rectangularity of the cassette units and the U-shape of the bent perforated wall segment could well have been claimed in the US patent and in the application, respectively, having been disclosed in the respective Specifications (see “Summary of the Invention”, fourth paragraph, in the US Patent for disclosure of rectangular cassette units, and see page 3, central paragraph, of the instant application’s Specification, for disclosure of the U-shaped form of the bent wall sections).

Claim limitations of the Applicant’s claim 1 are obvious over said US Patent.

FIG. 2 of the Application is obvious over FIG. 3 of said Patent; FIG. 3 of the Application is obvious over FIG. 4 of said Patent; FIG. 4 of the Application is obvious over FIG. 5 of said Patent; FIG. 5a of the Application is obvious over FIG. 6a of said Patent; FIG. 5b of the Application is obvious over FIG. 6b of said Patent; FIG. 5c of the Application is obvious over FIG. 6c of said Patent.

***Claim Rejections - 35 USC § 102***



5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims **1 and 3-12** are rejected under 35 U.S.C. 102(b) as being anticipated by Kielbowicz (US Patent No.5,759,398; '398 hereinafter; cited before).

Regarding claim **1**, '398 discloses: a protective screen for screening off a suction space and a suction duct connected to it, in an emergency cooling system of a nuclear power plant (title, abstract, column 1, lines 5+, column 2, lines 1+), said protective screen including: at least one screen wall element having a suction side and an outflow side (11, 12, 13 in FIG2, 3, 4, 5, column 2, lines 24+, column 3, lines 1+), wherein the screen wall element is built up of one or more modular rectangular cassette units (combination of pockets 14 shown in FIGs. 3, 4, 5, column 2, lines 24+; rectangular definition: crossing, lying, or meeting at a right angle; having edges, surfaces, or faces that meeting at right angles (Merriam-Webster collegiate dictionary. -10th edit., 1998; page 978)) and wherein the cassette units each contain a plurality of screen pockets which are open towards the suction side (14 in Figs. 3, 4, 5, column 2, lines 24+) spaced apart walls and one or more intermediate walls arranged between and apart from the spaced apart walls, which intermediate walls are formed as double walls allowing fluid flow

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inside the double walls (sequences of close locating walls 11, 12 are equal to said intermediate walls and can service as spaced apart wall, because some said wall can be made without perforation), and bent perforated wall segments spanning the distance between two consecutive intermediate walls and between spaced apart wall and an intermediate wall (13 in FIGs. 3, 4, 5, column 2, lines 24+, column 3, lines 1+), in order to form the screen pockets, said screen pockets having lateral sides and being are surrounded by outflow gaps, said outflow gaps being connected to the outflow side or open towards the outflow side (14 in FIGs. 3, 4, 5, column 3, lines 3+), and wherein the cassette units are configurable for placement in a row in order to assemble the screen wall element in the desired size (as shown in FIG. 2; the prior art meets the claim language).

In reference to the claim language referring to claim 1, intended use and other types of functional language must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In re Casey, 152 USPQ 235 (CCPA 1967); In re Otto, 136 USPQ 458, 459 (CCPA 1963).

On claim 3, '389 teaches: the screen pockets are each surrounded on their lateral sides by outflow gaps (13 in FIG. 2, 14 in FIGs. 3, 4, 5, column 2, lines 24+, column 3, lines 1+).

On claim **4**, '389 teaches: the bent perforated wall segments are bent in a substantially U-shaped form (13 in FIGs. 3, 4, column 2, lines 24+, column 3, lines 1+).

On claim **5**, '389 teaches: the screen pockets have a depth of greater than 0.1 m. The depth of the sieve pockets disclosed by '389 is not given a specific value, and thus there is no explicit teaching with regard to claim 5. However, '389 states that the favorable ratio between the volume of the sieve and its effective sieve surface is due to the fact that water can flow through outwardly opening sieve pockets, each of which forms a partial sieving volume. In other words, the more convoluted the sieve structure – i.e., the deeper the pockets – the more accessible area there is for water to escape, the lower the flow rate of the water through any given aperture and the more constant the pressure regardless of debris accumulation (col. 3, lines 29-43). The claimed pocket depths are therefore result-effective variables that may be optimized within prior art conditions or through routine experimentations. See MPEP § 2144.05(II)(A). It would have been obvious to one skilled in the art at the time of invention to develop pockets having depths greater than 0.1 m for the screen taught by '389 in order to prevent undesirable pressure changes, a motivation disclosed by '389 as stated above. Applicant's argument that "the parameters are different" between aforementioned circuits does not convince because parameter adjustment per se is within the capabilities of ordinary skill in the art.

Counter to applicant insistence on TSM as the acceptable obviousness rejection:

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The claim would have been obvious because a person of ordinary skill has good reason to pursue the known options within his her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense (MPEP 2143).

On claim **6**, '389 teaches: the spaced apart walls of the cassette units are formed as double walls having outflow gaps (sequences of walls 11, 12 as shown in FIG. 2; column 2, lines 24+)

On claim **7**, '389 teaches: the spaced apart walls and the intermediate walls of the cassette units are clamped against one another by means of connection elements (bolts 10 in FIGs. 1, 2, 3, 4, column 2 lines 24+)

On claim **8**, '389 teaches: any of the spacings between the spaced apart walls and intermediate walls is determined in part by spacer elements disposed between the spaced apart walls and intermediate walls (spacers 21, 22 in FIGs. 2,, 5, column 3, lines 14+).

On claim **9**, '389 teaches: any of the walls or intermediate walls or the perforated and bent wall segments are manufactured from perforated sheet metal (11, 12, 13 in FIGs, 2, 3, 4, 5, column 3, lines 4+).

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On claim **10**, '389 additionally teaches: the suction pockets have a depth of greater than 0.2 m.

The depth of the sieve pockets disclosed by '389 is not given a specific value, and thus there is no explicit teaching with regard to claim 10. However, '389 states that the favorable ratio between the volume of the sieve and its effective sieve surface is due to the fact that water can flow through outwardly opening sieve pockets, each of which forms a partial sieving volume. In other words, the more convoluted the sieve structure – i.e., the deeper the pockets – the more accessible area there is for water to escape, the lower the flow rate of the water through any given aperture and the more constant the pressure regardless of debris accumulation (col. 3, lines 29-43). The claimed pocket depths are therefore result-effective variables that may be optimized within prior art conditions or through routine experimentations. See MPEP § 2144.05(II)(A). It would have been obvious to one skilled in the art at the time of invention to develop pockets having depths greater than 0.2 m for the screen taught by '389 in order to prevent undesirable pressure changes, a motivation disclosed by '389 as stated above.

Applicant's argument that "the parameters are different" between aforementioned circuits does not convince because parameter adjustment per se is within the capabilities of ordinary skill in the art.

Counter to applicant insistence on TSM as the acceptable obviousness rejection:

The claim would have been obvious because a person of ordinary skill has good reason to pursue the known options within his/her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and

common sense (MPEP 2143).

On claim **11**, '389 additionally teaches: any of the spacings between the two sides of a double wall is determined by Spacer elements disposed between the two sides of the double wall (bolts 10 can service as spaces between the two sides of a double as shown in FIGs. 3, 4).

On claim **12**, '389 additionally teaches: any of the spacings between the intermediate walls is determined by spacer elements disposed between the intermediate walls (spacers 21, 22 in FIGs. 2, 5, column 3, lines 17+).

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vadim Dudnikov whose telephone number is 571- 270-1325. The examiner can normally be reached on 8:00 - 17:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack W. Keith can be reached, Mon-Fri 7:00am-4:00 pm, at telephone number 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

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applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VD

March 24, 2008.

/Johannes P Mondt/

Primary Examiner, Art Unit 3663